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Supreme Court of the United States

OCTOBER TERM, 1952

No. 76

+ 138

**EDWIN E. HEALY AND GORDON W. HARTFIELD,
PETITIONERS,**

vs.

COMMISSIONER OF INTERNAL REVENUE

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

**PETITION FOR CERTIORARI FILED MAY 20, 1952
CERTIORARI GRANTED OCTOBER 13, 1952**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 76

EDWIN E. HEALY AND GORDON W. HARTFIELD,
PETITIONERS,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., Oct. 27, 1952.

At all times pertinent hereto, Hartfield was vice-president and treasurer and Healy was president of Hartfield-Healy Supply Company, Inc., a New York corporation (hereinafter called the corporation), and each petitioner owned 25 of the total of 52 shares of the corporation's common stock.

Each petitioner included in his individual income tax return for 1945 the \$30,000 received as salary. During the year 1945, the corporation paid insurance premiums on the lives of Hartfield and Healy in the amounts of \$1,044.20 and \$1,131.25, respectively, which premiums were for petitioners' benefit.

Respondent upon examination of the corporation's return for 1945 determined that \$10,000 of the salary paid to each petitioner and the life insurance premiums paid for petitioners were excessive compensation and disallowed such payments as deductions. Similar determinations were made to the corporation's income by respondent for salaries paid in the years 1941, 1942, and 1943, which amounts are set out below:

Year	Amounts paid	Amounts disallowed
1941	\$28,000	\$8,000
1942	62,000	22,000
1943	62,000	2,000

In addition, the Commissioner disallowed as excessive compensation in 1943, the payment of life insurance premiums by the corporation for the benefit of the petitioners in the total amount of \$2,175.45. The following deficiencies in tax and interest resulted from those disallowances:

Year	Income tax	Excess profits tax	Interest
1941	\$1,523.64	\$1,882.37	\$476.14
1942	420.02	20,360.01	3,100.06
1943	221.07		11.63

The 1945 income tax of the corporation showed a net loss of \$45,232.75. Because of the disallowance of excessive compensation and several other minor adjustments, the corporation's net loss for 1945 was reduced to \$21,741.29. The application of the net loss carry-back based upon that

[fol. 11] adjusted net loss resulted in the elimination of the 1942 and 1943 income tax deficiencies and the interest thereon and reduced the 1942 excess profits tax deficiency by the amount of \$13,834.70 and the interest due thereon by the amount of \$1,489.80. There remained unpaid by the corporation the following deficiencies in tax and interest:

Year	Income tax	Excess profits tax	Interest
1941	\$1,523.64	\$1,882.37	
1942		6,525.31	\$1,465.33

On December 31, 1947, each petitioner advanced \$5,250 to the corporation to be used to pay the remaining income and excess profits tax deficiencies and interest, and on that same day, the corporation paid \$9,931.32 out of those funds to the collector of internal revenue at Buffalo, New York, in partial satisfaction of those deficiencies.

On December 24, 1948, each petitioner paid \$715.37 to the collector of internal revenue at Buffalo in satisfaction of the balance due from the corporation on the said deficiencies. The petitioners made no further payments on any deficiencies.

The corporation paid no dividends during 1945.

OPINION

BLACK, Judge:

The sole question herein is whether that portion (or any part thereof) of petitioners' salaries which was disallowed as a deduction in the taxable year to a corporation as being excessive is includible in petitioners' income where the corporation was insolvent and petitioners as transferees satisfied, in a subsequent year, the tax deficiencies of the corporation pertaining to years other than the taxable year, which arose as a result of the disallowance of excessive salaries in those other years. No question is raised by either party as to the insolvency of the corporation or as to the liability of petitioners as transferees.

Petitioners contend that the excessive salaries which they received from the corporation in 1945 are not includible in their incomes because the disallowance of these salaries (in [fol. 12], addition to several other minor adjustments) reduced the corporation's net loss for 1945, and in the appli-

cation of the net loss carry-back there remained tax deficiencies of the corporation for the years 1941 and 1942 which petitioners voluntarily satisfied as transferees.

Respondent contends that the full amount of the salaries received in 1945 is includible in petitioners' incomes and may not be reduced by the amount of excessive salary determination, and in any event the most that petitioners would be entitled to as an exclusion would be the amount subsequently paid as transferees.

The facts herein are almost identical with those in *Hall C. Smith*, 11 T. C. 174, and we believe that case governs the instant proceedings. In the *Smith* case the transferee liability had already been determined by this Court in a prior proceeding and petitioner was found liable as a transferee to the full extent of the excessive compensation received by him in 1943. Although the transferee liability was not determined until 1948 (*Hall C. Smith, Transferee*, Docket No. 9462, affd., 184 Fed. (2d) 1011), we held that the petitioner therein had not received taxable income in 1943. We said:

• • • Here, there was a definite legal restriction of the petitioner's use of the excessive compensation which attached the moment that he received it. Such is the nature of a transferee liability.

There is obvious inconsistency, as well as injustice, in the respondent's position in seeking to tax the petitioner on income to which he, the respondent, has successfully laid claim on the ground that it was never the petitioner's income by right.

The fact that the transferee liability was admitted by the petitioners in the instant proceedings should not place them in a worse position than was the petitioner in *Hall C. Smith, supra*, and we cannot therefore distinguish the cases on this fact. In *Hall C. Smith, supra*, the transferee liability exceeded the amount of excessive compensation and we therefore held that all of the excessive compensation was expressed with a trust and was not taxable income to petitioner when received. Petitioners herein claim that the full amount of their excessive compensation is likewise not taxable income.

Although respondent disagrees with the result in *Hall C.*

Smith, supra, he argues that even if we are to follow the rationale of the *Smith* case, that case does not support petitioners' contention that *all* of *their* excessive compensation received in 1945 is not taxable income. Respondent contends that only the amounts actually used to satisfy the corporate deficiencies (\$5,681.03 from each petitioner) should be excluded from taxable income. We agree with the contention because the only amounts which petitioners received as excessive compensation in the taxable year, which were not income, were the amounts ultimately paid in satisfaction of their transferee liabilities which amounts were impressed with a trust from the time of their receipt. *Hall C. Smith, supra; Commissioner v. Turney*, 82 Fed. (2d) 661.

Decisions will be entered under Rule 50.

IN THE TAX COURT OF THE UNITED STATES

Docket No. 22944

GORDON W. HARTFIELD, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DECISION—Entered March 14, 1951

Pursuant to the determination of the Court as set forth in its Findings of Fact and Opinion promulgated January 26, 1951, the respondent herein filed a computation on March 13, 1951, to which petitioner acquiesced, now therefore, it is

Ordered and Decided: that there is an overpayment in income tax for the calendar year 1945 in the amount of \$3,049.68, which amount was paid within three years before the execution of an agreement pursuant to section 276(b), [fol. 14] which was executed within three years from the time the return was filed by the taxpayer.

(Signed). Eugene Black, Judge.

Recorded Docket M.S. 8.

[fol. 1]

APPENDIX TO BRIEF FOR APPELLANT IN THE TAX COURT OF THE UNITED STATES

GORDON W. HARTFIELD, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

For Petitioner: James H. Heffern, Esq.

For Respondent: Michael Waris, Esq.

DOCKET ENTRIES

Appearances:

1949

May 9. Petition received and filed. Taxpayer notified.

May 9. Request for Circuit hearing in Buffalo, New York filed by taxpayer. Granted 5/12/49.

May 10. Copy of petition served on General Counsel.

July 8. Answer filed by respondent.

July 12. Copy of answer served on taxpayer, Buffalo, New York.

Aug. 30. Hearing set Oct. 31, 1949, Buffalo, New York.

Act. 31. Hearing had before Judge Black on the merits. Stipulation of facts and exhibits filed. Briefs, December 15, 1949. Replies Jan. 5, 1950.

Nov. 7. Transcript of Hearing 10/31/49 filed.

Dec. 9. Brief filed by taxpayer. Copy served 12/16/49.

Dec. 15. Brief filed by General Counsel.

1950

Jan. 11. Reply brief filed by taxpayer. Copy served.

1951

Jan. 26. Findings of fact and opinion rendered. Black J. Decision will be entered under Rule 50. Copy served.

Mar. 13. Agreed computation for entry of decision filed.

[fol. 2] Mar. 14. Decision entered. Black J. Div. 15.

June 13. Petition for review by U. S. Court of Appeals for the Second Circuit filed by General Counsel.

- June 13. Notice of filing petition for review sent to James H. Heffern, counsel for taxpayer.
- July 10. Proof of service of petition for review from Gordon W. Hartfield, taxpayer.
- July 13. Motion for extension to Sept. 11, 1951 to complete and transmit the record on review filed by General Counsel.
- July 13. Order enlarging time to Sept. 11, 1951 to prepare and transmit the record entered.
- Aug. 21. Statement of Points filed by taxpayer with service thereon.
- Aug. 21. Designation of contents of record filed by taxpayer with service thereon.
- Aug. 29. Certified copy of an order from the Second Circuit consolidating cases for briefs, hearing, and decision upon a single consolidated transcript of record filed.

IN THE TAX COURT OF THE UNITED STATES

EDWIN E. HEALY, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

For Petitioner: James H. Heffern, Esq.

For Respondent: Michael Waris, Esq.

DOCKET ENTRIES

Appearances:

1949

May 9. Petition received and filed. Taxpayer notified. Fee paid.

May 9. Request for Circuit hearing in Buffalo, N. Y. filed by taxpayer. Granted 5/12/49.

May 10. Copy of petition served on General Counsel.

July 8. Answer filed by Respondent.

July 12. Copy of answer served on taxpayer, Buffalo, New York.

[fol. 3] Aug. 30. Hearing set Oct. 31, 1949, Buffalo, New York.

Oct. 31. Hearing had before Judge Black on the merits.
 Stipulation of facts and exhibits filed. Briefs, December
 15, 1949. Replies Jan. 5, 1950.

Nov. 17. Transcript of Hearing 10/31/49 filed.

Dec. 9. Brief filed by taxpayer. Copy served 12/16/49.

Dec. 15. Brief filed by General Counsel.

1950

Jan. 11. Reply brief filed by taxpayer. Copy served.

1951

Jan. 26. Findings of fact and opinion rendered. Black J.
 Decision will be entered under Rule 50. Copy served.

Mar. 13. Agreed computation for entry of decision filed.

Mar. 14. Decision entered, Black J. Div. 15.

June 13. Petition for review by United States Court of
 Appeals for the Second Circuit filed by General Counsel.

June 13. Notice of filing petition for review sent to James
 H. Heffern, counsel for taxpayer.

July 10. Proof of service of petition for review from
 Edwin E. Healy, taxpayer.

July 13. Motion for extension to Sept. 11, 1951, to complete
 and transmit the record on review filed by General
 Counsel.

July 13. Order enlarging time to Sept. 11, 1951 to prepare
 and transmit the record entered.

Aug. 21. Statement of Points filed by taxpayer with service
 thereon.

Aug. 21. Designation of contents of record filed by taxpayer
 with service thereon.

Aug. 29. Certified copy of an order from the Second Circuit
 consolidating cases for briefs, hearing, and decision
 upon a single consolidated transcript of record filed.

[fol. 4] IN THE TAX COURT OF THE UNITED STATES

STIPULATION OF FACTS—Filed October 31, 1949

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel, that the following facts shall be taken as true, provided, however, that this stipulation shall be without prejudice to the right of either

party to introduce other and further evidence not inconsistent with the facts herein stipulated to be true. It is also stipulated that these proceedings may be consolidated for hearing and opinion.

1. Gordon W. Hartfield and Edwin E. Healy, both on a cash receipts and disbursements basis, filed their 1945 Federal income tax returns and paid the tax shown to be due thereon on or about the 27th day of March, 1946, with the Collector of Internal Revenue for the Twenty-Eighth District of New York. Copies of said returns are attached hereto marked Exhibits 1 and 2, respectively, and made a part hereof.

2. At all times pertinent hereto, Hartfield was vice-president and treasurer and Healy was president of Hartfield-Healy Supply Company, Inc., a New York corporation (hereafter called the corporation), and each petitioner owned 25 of the total of 52 shares of the corporation's common stock.

3. The corporation paid to the petitioners as salaries, and the Commissioner disallowed as excessive the following amounts:

	Amounts paid	Amounts disallowed
1941	\$28,000.00	\$ 8,000.00
1942	62,000.00	22,000.00
1943	62,000.00	2,000.00

In addition, the Commissioner disallowed as excessive compensation, in 1943, the payment of life insurance premiums by the corporation for the benefit of the petitioners in the total amount of \$2,175.45. The following [fol. 5] deficiencies in tax and interest resulted from those disallowances:

	Income tax	Excess profits tax	Interest
1941	\$1,523.64	\$ 1,882.37	\$ 476.14
1942	420.02	20,360.01	3,100.06
1943	221.07		11.63

4. During the year 1945, the corporation made cash salary payments to Healy in the amount of \$1,193.80 and to Hartfield in the amount of \$1,212.10, in each of the first three months of that year and in the amount of \$500.00 in each of

the nine remaining months, or a total of \$8,081.40 to Healy and \$8,136.30 to Hartfield. In December, it accrued \$21,918.60 as additional 1945 salary payable to Healy and \$21,863.70 to Hartfield, and charged against each of those accounts the amount of \$5,042.70 which represented the amount of withholding tax paid by it in connection with each salary. On March 30, 1946, cash payments representing the balance of the 1945 accrued salaries were made to Healy and Hartfield in the respective amounts of \$16,875.90 and \$16,821.00.

5. The 1945 Federal income tax return of the corporation, a copy of which is attached hereto and marked Exhibit 3, showed a net loss for that year of \$45,232.75. Upon examination of that return, the Commissioner determined that \$10,000 of the salary paid and accrued by the corporation in 1945 to each of the petitioners was excessive compensation, and that life insurance premiums paid by the corporation in 1945 for the benefit of Hartfield in the amount of \$1,044.20, and for the benefit of Healy in the amount of \$1,131.25 also were excessive compensation, and disallowed those excessive payments as deductions from the corporation's income for 1945. Because of those disallowances and several other minor adjustments, the corporation's net loss for 1945 was reduced to \$21,741.29. The application of the net operating loss carry-back based upon that adjusted net loss resulted in the elimination of the 1942 and 1943 income tax deficiencies and the interest thereon and reduced the 1942 excess profits tax deficiency by the amount of \$13,834.70 and the interest due thereon by the amount of \$1,589.80. There [fol. 6] remained unpaid by the corporation the following deficiencies in tax and interest:

	Income tax	Excess profits tax	Interest
1941	\$1,523.64	\$1,882.37	
1942		6,525.31	\$1,465.30

6. On December 31, 1947, each petitioner advanced \$5,250.00 to the corporation to be used to pay the said remaining income and excess profits tax deficiencies and interest, and on that same day, the corporation paid \$9,931.32 out of those funds to the Collector of Internal Revenue at Buffalo, New York, in partial satisfaction of those deficiencies.

6.

7. There is attached hereto and marked Exhibit 4 a copy of a letter dated December 3, 1947, addressed to the Revenue Agent in Charge in Buffalo relating to the payment of said remaining deficiencies.

8. On December 24, 1948, each petitioner paid \$715.37 to the Collector of Internal Revenue at Buffalo in satisfaction of the balance due from the corporation on the said deficiencies. The petitioners made no further payments on any deficiencies.

9. The corporation paid no dividends during 1945.

10. The balance sheets of the corporation as of December 31, 1944, and 1945, were as follows:

	Assets	
	Dec. 31, 1944	Dec. 31, 1945
Cash	\$13,720.74	\$10,970.37
Notes and Accounts Receivable	29,776.32	18,878.59
Inventories	29,201.20	37,682.03
U. S. Government bonds	18.75	
Deposits Restricted	435.00	
Post War Refund bonds		4,410.24
Reserve against bonds		(1,516.50)
Depreciable Assets	1,723.20	1,723.20
Reserve for Depreciation	(675.11)	(847.43)
Prepaid Insurance	97.86	
Due from Officers	3,989.12	686.79
Organization Expense	214.17	214.17
Post War Refund	6,674.57	1,941.57
Reserved for Post War Refund	(2,264.33)	(1,941.57)
	<hr/>	<hr/>
	\$82,911.49	\$72,201.46
	Liabilities	
Accounts Payable	\$18,408.76	\$11,837.83
Notes Payable	28,491.10	66,696.90
Accrued Expenses	3,998.00	12,286.58
Accrued Federal Income Tax	25,760.07	7,888.35
Due U.S. Account Renegotiation	4,934.80	
Capital Stock	5,200.00	5,200.00
Deficit	(3,881.24)	(31,708.20)
	<hr/>	<hr/>
	\$82,911.49	\$72,201.46

[fol. 7] 11. It is hereby stipulated and agreed that the Commissioner correctly included life insurance premiums paid by the corporation in the taxable income of Hartfield and Healy as additional compensation for the calendar year 1945 in the respective amounts of \$1,044.20 and \$1,131.25.

(Sgd.) James H. Heffern, (Counsel for Petitioners).

(Signed) Charles Oliphant, RPH, Chief Counsel,
Bureau of Internal Revenue.

EXHIBIT 4

Albrecht, Maguire & Mills
1300 Genesee Building
Buffalo 2, New York

December 3, 1947.

(TR 60-61)

Revenue Agent in Charge
Jackson Building
Buffalo, New York

In re: Hartfield-Healy Supply Company, Inc.

1941-1942

1943-1945

DEAR SIR:

Pursuant to recent conferences with your office in the above entitled matters, we are submitting the following proposal as a basis for settlement of the pending matters which affect the income tax and excess profits tax liability of Hartfield-Healy Supply Company, Inc.:

1. The findings set out in the Revenue Agent's Report of January 23, 1947, to be revised by the allowance of an additional \$10,000.00 as officers' salaries, the effect of this being to increase by that amount the loss for the year 1945 from \$11,741.29 to \$21,741.29.

2. The 1945 loss as so revised to be carried back to the year 1943, and a recalculation to be made of the over-assessment for that year.

[fol. 8] 3. The overassessment so determined to be applied

against the outstanding deficiencies heretofore determined for the years 1941 and 1942.

4. All of this to be with the understanding that the net deficiencies for the years 1941 and 1942 are to be paid subject only to such arrangements as to terms, if any, as can be arranged between the taxpayer and the Collector; and with the further understanding that no further reduction in such net deficiencies will be sought by the taxpayer.

5. All of this to be with the further understanding that this proposal and the undertaking for payment are to be participated in by Edwin E. Healy and Gordon W. Hartfield in addition to the taxpayer itself.

6. Such formal papers by way of acceptance or consent forms as may be necessary to be executed by the taxpayer.

We are authorized to submit the foregoing proposal on behalf of Hartfield-Healy Supply Company, Inc., Edwin E. Healy and Gordon W. Hartfield, all of whom signify their approval thereof and their assurance of compliance therewith by adding their signatures at the end of this letter.

Respectfully, Albrecht, Maguire & Mills, Frank J. Maguire.

We, the undersigned, hereby approve and authorize the foregoing proposal for settlement of pending matters involving the income taxes and excess profits taxes of Hartfield-Healy Supply Company, Inc., and agree that if said proposal is accepted, we will jointly see to the carrying out of the terms thereof.

Hartfield-Healy Supply Company, Inc., by _____,
President; Edwin E. Healy, Gordon W. Hartfield.

December 3, 1947.

FJM:jw.

[fol. 9] IN THE TAX COURT OF THE UNITED STATES

FINDINGS OF FACT AND OPINION OF THE TAX COURT

These consolidated proceedings involve deficiencies and claims for overpayment of income tax for 1945, as follows:

Petitioner	Docket No.	Deficiency	Claim for overpayment
Gordon W. Hartfield	22944	\$567.51	\$6,202.09
Edwin E. Healy	22945	1,029.89	4,437.71

The major portion of the deficiencies results from respondent's determination that additional compensation was received for the year 1945 in the amounts of \$1,044.20 by petitioner Gordon W. Hartfield and \$1,131.25 by petitioner Edwin E. Healy. This adjustment was explained in a statement attached to the deficiency notice in Docket No. 22944, as follows:

(a) Life insurance premiums paid in your behalf by the Hartfield-Healy Supply Company are held to constitute taxable income to you.

A similar explanation was given in Docket No. 22945.

Petitioners have stipulated that respondent properly included these amounts as additional compensation; however, by appropriate assignments of error petitioners contest respondent's determination that all the amounts of compensation received by petitioners in 1945 which respondent determined as excessive, and thereby disallowed the deduction of same by Hartfield-Healy Supply Company, represent taxable income to petitioners.

FINDINGS OF FACT

The facts, all of which have been stipulated, are found as stipulated and may be summarized, as follows:

Petitioner Gordon W. Hartfield (hereinafter called Hartfield) and petitioner Edwin E. Healy (hereinafter called Healy), both on a cash receipts and disbursements basis, filed their 1945 income tax returns and paid the tax shown to be due thereon on or about March 27, 1946, with the [fol. 10] collector of internal revenue for the 28th district of New York.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 138

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

HALL C. SMITH

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

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IN THE TAX COURT OF THE UNITED STATES

Docket No. 22945

EDWIN E. HEALY, Petitioner;

COMMISSIONER OF INTERNAL REVENUE, Respondent

DECISION—Entered March 14, 1951

Pursuant to the determination of the Court as set forth in its Findings of Fact and Opinion promulgated January 26, 1951, the respondent herein filed a computation on March 13, 1951, to which petitioner acquiesced, now therefore it is

Ordered and Decided: that there is an overpayment in income tax for the calendar year 1945 in the amount of \$2,619.93, which amount was paid within three years before the execution of an agreement pursuant to section 276(b) which was executed within three years from the time the return was filed by the taxpayer.

(Signed) Eugene Black, Judge.
Recorded Docket M.S. 8.

{fol. 15} UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1951

Nos. 153-154

(Argued January 17, 1952. Decided February 15, 1952)

Docket Nos. 22127-22128

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

v.

GORDON W. HARTFELD, Respondent

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

v.

EDWIN E. HEALY, Respondent

Before Augustus N. Hand and Clark Circuit Judges, and
Brennan, District Judge

Petition to review the determination of the Tax Court
finding that there were overpayments in the petitioners'
income tax for the calendar year 1945:

[fol. 16] Theron Lamar Caudle, Assistant Attorney General,
Ellis N. Slack, A. F. Prescott, Graham Loving, Jr.,
Special Assistants to the Attorney General.

James H. Heffern, Attorney for Respondents.

BRENNAN, District Judge:

This appeal questions the taxable status of the alleged
overpayment by the taxpayers of income tax for the calendar
year 1945. The facts are not complicated; the issue
of law is concise.

At the times pertinent here, George W. Hartfield and
Edwin E. Healy were officers of the Hartfield-Healy Supply
Company, Inc., a New York corporation, and each was
the owner of twenty-five of the fifty-two outstanding shares
of stock. In 1945 the corporation was insolvent. During
that year there was paid by the corporation as salary to
each of the above named officers the sum of \$30,000. Such

payments were reported on the corporate tax return for that year, and were reported as income received by the recipients in their 1945 individual income tax returns, which were made on a cash basis.

Upon later examination of the corporate return, the Commissioner found that \$10,000 of the amount paid to each taxpayer as salary, and about \$1000 in life insurance premiums paid for him were excessive, and same were disallowed as deductions therein. Other determinations affecting the corporate returns in prior years were made, resulting in tax deficiencies. In 1947 and 1948 Hartfield and Healy each paid to the Collector direct, or through the corporation, a total of about \$7,000 to satisfy the balance of the deficiencies due from the corporation. The determinations of the Commissioner above referred to, the [fol. 17] insolvency of the corporation, and the liability of respondents as transferees in the amounts paid are not disputed.

Appropriate proceedings were instituted by Hartfield and Healy to recover the claimed overpayment of their individual 1945 income tax based upon the facts as outlined above. The proceedings were consolidated, and the Tax Court held (16 T. C. 200), that the amounts actually paid to satisfy the corporate tax deficiencies were impressed with a trust from the time of their receipt as salaries, and should be excluded from the taxable income of respondents as shown in their returns. It was held that they should accordingly recover the resulting overpayments.

A legal issue arises by reason of the petitioner's contention that the lower court was in error in concluding that respondents' returns for 1945 should be reopened to reflect subsequent facts.

Since the decision below, the Supreme Court in *U. S. v. Lewis*, 340 U. S. 590, has re-affirmed the "claim of right" doctrine, as enunciated in *North American Oil v. Burnet*, 286 U. S. 417, and refers to same as " * * * now deeply rooted in the federal tax system." This court in the case of *Commissioner v. Bauer*, decided January 10, 1952, cited *U. S. v. Lewis*, and recognized that a tax return for a previous year may not be reopened to reflect subsequent facts as a well-settled principle.

There would seem to be no question here that the re-

spondents received their 1945 salaries from the corporation under a claim of right, and without restriction as to their disposition, which is the test outlined in the *North American Oil* case. The fact that such salaries were reported on the individual tax returns as earnings or income would seem to be determinative of that question.

There remains then only respondents' contention that such salaries were received impressed with a trust by reason [fol. 18] son of the provisions of the Internal Revenue Code relative to the liability of transferees, or the provisions of Section 15 of the Stock Corporation Law of the State of New York. The latter contention was not raised below.

The liability of the taxpayers as transferees must necessarily have awaited the determination as to the existence and amount of the excessive salary payments. It was not fixed in 1945. Even though corporate insolvency were admitted, the liability of the officers did not exist until excessive payments were determined as a fact, and it was established that a deficiency in the corporate tax existed. The citation of *North American Oil v. Burnet, supra*, and *U. S. v. Lewis, supra*, would seem to be sufficient to demonstrate that the decision below cannot stand upon the transferee trust fund theory. (See also *Fleischer v. Commissioner*, 158 F. 2d 42.) This seems to be recognized by the Tax Court itself in *Pittman v. Commissioner*, 14 T. C. 449.

Section 15 of the Stock Corporation Law of the State of New York is not applicable here. If it has any bearing on a question of federal taxation, we are not persuaded that it would override the legal principle above referred to. In any event it would apply only in case of payments made with the intent of giving a preference to creditors. Such intent must exist or be established to invoke the statute and to establish a liability upon the recipient. The contention lacks a factual basis. (*N. Y. Credit Men's Association v. Hasenberg*, 26 F. Supp. 877; affirmed 107 F. 2d 1020, *per curiam*.)

Reversed.

[fols. 18-20] UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals in and for the Second Circuit; held at the United States Courthouse in the City of New York, on the 15th day of February, one thousand nine hundred and fifty-two.

Present: Hon. Augustus N. Hand, Hon. Charles E. Clark Circuit Judges; Hon. Stephen W. Brennan, District Judge

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

v.

GORDON W. HARTFELD, Respondent

JUDGMENT

Appeal from The Tax Court of the United States

This cause came on to be heard on the transcript of record from The Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said The Tax Court of the United States be and it hereby is reversed.

It is further ordered that a Mandate issue to the said The Tax Court of the United States in accordance with this decree.

Alexander M. Bell, Clerk.

[fols. 21-22] UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 15th day of February, one thousand nine hundred and fifty-two.

Present: Hon. Augustus N. Hand, Hon. Charles E. Clark, Circuit Judges; Hon. Stephen W. Brennan, District Judge.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

v.

EDWIN E. HEALY, Respondent

JUDGMENT

Appeal from The Tax Court of the United States

This cause came on to be heard on the transcript of record from The Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said The Tax Court of the United States be and it hereby is reversed.

It is further ordered that a Mandate issue to the said The Tax Court of the United States in accordance with this decree.

Alexander M. Bell, Clerk.

[fol. 23] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 24] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1951

No. —

EDWIN E. HEALY, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE

GORDON W. HARTFIELD, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE

ORDER

Upon consideration of the application of counsel for the petitioners,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 29, 1952.

Robert H. Jackson, Associate Justice of the Supreme Court of the United States.

Dated this 12th day of May, 1952.

(1850)

[fol. 21] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1952

No. 6

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 13, 1952

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4550)